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Minnesota Pollution Control Agency

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ADMINISTRATION

Mr. Lee M. Thomas
Deputy Administrator
U.S. Environmental Protection Agency
400 M Street S.W.
Washington D.C. 20460

Dear Mr. Thomas:

As you may be aware, Minnesota is currently participating in both the cleanup of the Reilly Tar and Chemical site in St. Louis Park, Minnesota, under a Cooperative Agreement with your agency, and litigation against the responsible party in conjunction with your agency and the U.S. Department of Justice. While we currently have staff assigned to the project which are funded under the Cooperative Agreement, their efforts are limited solely to the cleanup remedy at the site. Since a cut-off date for discovery of May 1, 1984 has been set by the magistrate for the litigation, a great deal of effort must now be devoted to discovery activities and preparation for the trial. Under the current Cooperative Agreement with your agency, staff time may not be devoted to enforcement activities.

A December 15, 1982 memorandum from William Hedeman and Gene Lucero to Rita Lavelle, then Assistant Administrator, recommends:

"The Agency should adopt Option 2, allowing specifically identified site-specific enforcement costs related to investigation and development of evidence that are difficult to distinguish from other cleanup related costs, to be included as prospective costs in future cooperative agreements ... Costs associated with the public function of law enforcement such as court costs and payment of attorneys would not be allowable."

The Minnesota Pollution Control Agency fully concurs with this recommendation and intends to request such costs when the Reilly Tar and Chemical Cooperative Agreement is amended. The purpose of this letter is to request that the U.S. Environmental Protection Agency (EPA) adopt the recommendation of the December 15, 1982 memorandum as policy. The Reilly Tar and Chemical site

O. RC ✓
cc RF
Hinkle
WMD

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Mr. Lee M. Thomas
Page Two

is certainly not the only site, in Minnesota or throughout the country, where enforcement costs will be incurred concurrently with remedial action at the site. Funding of enforcement related costs early in the process will not only hasten efforts to recover costs following cleanup, but will also ensure that evidence is obtained as part of the cleanup and that evidence is useful and valid for the cost-recovery litigation.

I would be happy to discuss this matter with you at your earliest convenience. Please contact me or Michael Hansel of my staff (612) 296-7758 should you have any questions.

Sincerely,


Sandra S. Gardebring
Executive Director

SSG/mjh